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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/585,789	08/07/2008	Harald Hermle	06-440	6045
34704 7590 02/28/2011 BACHMAN & LAPOINTE, P.C. 900 CHAPEL STREET SUITE 1201 NEW HAVEN, CT 06510				
EXAMINER				
COOLEY, CHARLES E				
ART UNIT		PAPER NUMBER		
1774				
MAIL DATE		DELIVERY MODE		
02/28/2011		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary****Application No.**

10/585,789

**Applicant(s)**

HERMLE, HARALD

**Examiner**

Charles E. Cooley

**Art Unit**

1774

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 August 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 8-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 8-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 August 2008 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☒ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsman's Patent Drawing Review (PTO-945)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 07/12/2008
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **NON-FINAL OFFICE ACTION**

- 1. This application has been assigned to Technology Center 1700, Art Unit 1774 and the following will apply for this application:**

Please direct all written correspondence with the correct application serial number for this application to **Art Unit 1774**.

Telephone inquiries regarding this application should be directed to the Electronic Business Center (EBC) at <http://www.uspto.gov/ebc/index.html> or 1-866-217-9197 or to the Examiner at (571) 272-1139. All official facsimiles should be transmitted to the centralized fax receiving number 571-273-8300.

### ***Priority***

2. Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d). NONE of the CERTIFIED copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
3. Acknowledgment is made of applicant's claim for priority based on an application filed in . It is noted, however, that applicant has not filed a certified copy of the application as required by 35 U.S.C. § 119.

### ***Information Disclosure Statement***

4. Note the attached PTO-1449 form submitted with the Information Disclosure Statement filed 12 JUL 2006.

***Drawings***

5. The drawings are objected to under 37 CFR § 1.83(a) since the drawings must show every feature of the invention specified in the claims. Therefore, the following features must be shown or the features canceled from the claims. No new matter should be entered.

- a. the subject matter of claim 9.
- b. the subject matter of claim 12.

6. The drawings are objected to because of the following informalities:

- a. the primary features of the invention, such as the transponder 10, groove 9, and antenna 14 are poorly depicted in the Figure.
- b. the sole drawing figure does not comply with 37 CFR 1.84(u):

**Numbering of views:**

(1) The different views must be numbered in consecutive Arabic numerals, starting with 1, independent of the numbering of the sheets and, if possible, in the order in which they appear on the drawing sheet(s). Partial views intended to form one complete view, on one or several sheets, must be identified by the same number followed by a capital letter. View numbers must be preceded by the abbreviation "FIG." Where only a single view is used in an application to illustrate the claimed invention, it must not be numbered and the abbreviation "FIG." must not appear.

Correction is required.

7. Applicant should verify that (1) all reference characters in the drawings are described in the detailed description portion of the specification and (2) all reference

characters mentioned in the specification are included in the appropriate drawing Figure(s) as required by 37 CFR 1.84(p)(5).

### **INFORMATION ON HOW TO EFFECT DRAWING CHANGES**

#### **Replacement Drawing Sheets**

Drawing changes must be made by presenting replacement figures which incorporate the desired changes and which comply with 37 CFR 1.84. An explanation of the changes made must be presented either in the drawing amendments, or remarks, section of the amendment. Any replacement drawing sheet must be identified in the top margin as "Replacement Sheet" (37 CFR 1.121(d)) and include all of the figures appearing on the immediate prior version of the sheet, even though only one figure may be amended. The figure or figure number of the amended drawing(s) must not be labeled as "amended." If the changes to the drawing figure(s) are not accepted by the examiner, applicant will be notified of any required corrective action in the next Office action. No further drawing submission will be required, unless applicant is notified.

Identifying indicia, if provided, should include the title of the invention, inventor's name, and application number, or docket number (if any) if an application number has not been assigned to the application. If this information is provided, it must be placed on the front of each sheet and centered within the top margin.

#### **Annotated Drawing Sheets**

A marked-up copy of any amended drawing figure, including annotations indicating the changes made, may be submitted or required by the examiner. The annotated drawing sheets must be clearly labeled as "Annotated Marked-up Drawings" and accompany the replacement sheets.

#### **Timing of Corrections**

Applicant is required to submit acceptable corrected drawings within the time period set in the Office action. See 37 CFR 1.85(a). Failure to take corrective action within the set period will result in ABANDONMENT of the application.

If corrected drawings are required in a Notice of Allowability (PTOL-37), the new drawings MUST be filed within the THREE MONTH shortened statutory period set for reply in the "Notice of Allowability." Extensions of time may NOT be obtained under the provisions of 37 CFR 1.136 for filing the corrected drawings after the mailing of a Notice of Allowability.

***Specification***

8. The substitute specification is approved but has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.
9. The abstract is acceptable.
10. The title is acceptable.

***Claim Rejections - 35 USC § 103***

11. The terms used in this respect are given their broadest reasonable interpretation in their ordinary usage in context as they would be understood by one of ordinary skill in the art, in light of the written description in the specification, including the drawings, without reading into the claim any disclosed limitation or particular embodiment. See, e.g., *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004); *In re Hyatt*, 211 F.3d 1367, 1372 (Fed. Cir. 2000); *In re Morris*, 127 F.3d 1048, 1054-55 (Fed. Cir. 1997); *In re Zletz*, 893 F.2d 319, 321-22 (Fed. Cir. 1989). The Examiner interprets claims as broadly as reasonable in view of the specification, but does not read limitations from the specification into a claim. *Elekta Instr. S.A.v.O.U.R. Sci. Int'l, Inc.*, 214 F.3d 1302, 1307 (Fed. Cir. 2000).
12. To determine whether subject matter would have been obvious, "the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art

resolved .... Such secondary considerations as commercial success, long felt but unsolved needs, failure of others, etc., might be utilized to give light to the circumstances surrounding the origin of the subject matter sought to be patented."

*Graham v. John Deere Co. of Kansas City*, 383 U.S. 1, 17-18 (1966).

The Supreme Court has noted:

Often, it will be necessary for a court to look to interrelated teachings of multiple patents; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art, all in order to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue.

*KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1740-41 (2007). "Under the correct analysis, any need or problem known in the field of endeavor at the time of invention and addressed by the patent can provide a reason for combining the elements in the manner claimed." (Id. at 1742).

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**14. Claims 8-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Srinivasan (US 5,518,493) in view of Gorodissky et al. (US 4,972,110).**

The patent to Srinivasan discloses a centrifuge having a rotor 16 for holding a sample 18 to be centrifuged, the rotor being detachably seated on a rotary shaft 14 that

is connected to a drive 12, the rotor including a transponder/indicator 23/25/27 for indicating a characteristic of the rotor, and an antenna/reader 34/37/39 connected to a write/read unit 80/82/84. Srinivasan does not disclose the location of the transponder and antenna or the shape of the transponder and antenna. The patent to Gorodissky et al. discloses a centrifuge having a rotor 4 for holding a sample to be centrifuged, the rotor being detachably seated on a rotary shaft 1 that is connected to a drive 2, the rotor including an indicator 23 for indicating a characteristic of the rotor, and a reader 7 for interpreting the output from indicator 23; the indicator 23 being disposed in a groove being located in a lower plane surface of the rotor 4 (Fig. 1); wherein the indicator 23 has a disk-shaped configuration (Fig. 3a); wherein the reader 7 is arranged on or in a motor flange 5 positioned within a space formed by the lower plane surface of the rotor. It would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have located the transponder/indicator and antenna/reader of Srinivasan as disclosed by Gorodissky et al. for the purpose of disposing these elements on a surface of the rotor and motor flange shielded from contaminants and rotor loadings.

Furthermore, the mere rearrangement of parts has been held to be obvious or an obvious matter of design choice. *In re Japikse*, 181 F.2d 1019, 86 USPQ 70 (CCPA 1950); *In re Kuhle*, 526 F.2d 553, 188 USPQ 7 (CCPA 1975).

With regard to the product-by-process limitation of claim 10 (i.e., the manner in which the wherein the transponder is affixed into the groove, by bonding) does not impart patentability to the claim per MPEP 2113.



**15. Claims 8-10 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Srinivasan (US 5,518,493) in view of Boeckel (US 4,507,110).**

The patent to Srinivasan discloses a centrifuge having a rotor 16 for holding a sample 18 to be centrifuged, the rotor being detachably seated on a rotary shaft 14 that is connected to a drive 12, the rotor including a transponder/indicator 23/25/27 for indicating a characteristic of the rotor, and an antenna/reader 34/37/39 connected to a write/read unit 80/82/84. Srinivasan does not disclose the location of the transponder and antenna or the shape of the transponder and antenna. The patent to Boeckel discloses a centrifuge having a rotor 38 for holding a sample to be centrifuged, the rotor being detachably seated on a rotary shaft 28 that is connected to a drive 22, the rotor including a indicator 42 for indicating a characteristic of the rotor, and a reader 12 for interpreting the output from indicator 42; the indicator 42 being disposed in a groove being located in a lower plane surface 40 of the rotor (Figs. 1 and 1A); wherein the indicator 42 has a disk-shaped configuration (Fig. 1a); wherein the reader 12 has an annular configuration (Fig. 2). It would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have located the transponder/indicator and antenna/reader of Srinivasan as disclosed by Boeckel for the purpose of disposing these elements on a surface of the rotor and motor flange shielded from contaminants and rotor loadings.

Furthermore, the mere rearrangement of parts has been held to be obvious or an obvious matter of design choice as noted above.

With regard to the product-by-process limitation of claim 10 (i.e., the manner in which the wherein the transponder is affixed into the groove, by bonding) does not impart patentability to the claim per MPEP 2113.

### ***Conclusion***

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles E. Cooley in Art Unit 1774 whose telephone number is (571) 272-1139. The examiner can normally be reached on Monday - Friday. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

18. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). Additional assistance can be obtained via the Ombudsman Pilot Program is designed to enhance the USPTO's ability to assist applicants and/or their representatives with issues that arise during patent application prosecution. More specifically, if there is a breakdown in the normal

prosecution process, the Ombudsman Pilot Program can assist in getting the process back on track. See <http://www.uspto.gov/patents/ombudsman.jsp> . If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Charles E. Cooley/

Charles E. Cooley  
Primary Examiner  
Art Unit 1774

26 February 2011